UMAS SENDIRIAN BHD

v.

RHB BANK BHD & ANOR

HIGH COURT SABAH & SARAWAK, SIBU
TEE AH SING J
[SUIT NO: 22-46 OF 2000]
16 MAY 2000

CIVIL PROCEDURE: *Injunction - Ex parte injunction - Whether ex parte injunction could be extended until inter partes hearing - Whether fresh application should be filed - Whether court has inherent power to extend ex parte injunction - Rules of the High Court 1980, O. 29 r. 1(2B), O. 92 r. 4*

CIVIL PROCEDURE: *Affidavits - Jurat - Whether defective - Rules of the High Court 1980, O. 41*

The plaintiff obtained an *ex parte* order against the defendants for injunctive reliefs on 2 May 2000. A return date was given on 15 May 2000 for the *inter partes* hearing. At the said hearing, the plaintiff asked for an adjournment as he required time to file the affidavits in reply. The 1st defendant raised a preliminary objection that the affidavit ('the said affidavit') served on it did not comply with O. 41 of the Rules of the High Court 1980 ('RHC') as the name of the deponent was given as the language. Also, the language that it was translated into was not stated. Apart from that, it was submitted that the plaintiff should have made a fresh application for the *inter partes* application.

Held:

[1] The jurat of the court copy of the said affidavit read "read over and explained to Sabu bin Choching in Bahasa Melayu by Justine Balang Pako … Sgd: Commissioner for Oaths." As such, the jurat was not defective and had complied with O. 41 RHC. Further, the defendants had waived their right to raise that objection by filing their affidavits in opposition and/or reply to the said affidavit without stating their objections.

[2] Under O. 29 r. 1(2B) of the RHC, the life span of an *ex parte* injunction is two weeks. So a new application has to be filed.

[2a] The words appearing in O. 29 r. 1(2B) especially the expression 'unless sooner revoked or set aside' would, by itself, give the power to the court to set a return date for an *inter partes* hearing. This is the best way for the defendants to revoke or set aside the *ex parte* interim injunction before the expiry of two weeks.

[2b] With the insertion of r. 1(2B) to O. 29 of the RHC, the rules committee must have intended that all *ex parte* interim injunctions be valid for two weeks and return dates be given forthwith, preferably before the expiry of two weeks to enable the matter to be argued fully.

[2c] In the *inter partes* hearing, the *ex parte* interim injunction may be further extended *inter partes* until the disposal of the main suit. The court has an inherent power to make such an order [O. 92 r. 4 RHC].

[3] The defendants had been informed by the plaintiff that the *inter partes* hearing was fixed on 15 May 2000. The plaintiff also served the *ex parte* application and the supporting documents on the defendants. So there was no necessity for the plaintiff to file a fresh application to extend the *ex parte* injunction granted on 2 May 2000.

[4] The hearing fixed on 15 May 2000 was an *inter partes* hearing. As the plaintiff was only served the affidavits of the defendants on the date of the hearing, it was a reasonable request by the plaintiff for the hearing of the *inter partes* to be adjourned to another date to enable the plaintiff to file affidavits in reply.

[Injunctive reliefs granted in ex parte order dated 2 May 2000 be extended until hearing of inter partes arguments on 3 July 2000; costs in the cause.]

Case(s) referred to:
Lim Nyook Yin v. Ultratech Sdn Bhd & Anor [1995] 1 CLJ 215 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 29 r. 1(2B), O. 41, O. 92 r. 4

For the plaintiff - Shankar Ram; M/s Shankar Ram & Co
For the 1st defendant - Stephanie Chin; M/s Tang & Partners
For the 2nd defendant - Kilat Beriak; M/s Chew, Jugah, Wan Ullok & Co

Reported by Usha Thiagarajah

AWARD

Tee Ah Sing J:

By way of an *ex parte* summons in chambers dated 2 May 2000, the plaintiff prayed for the following orders:

(1) An order of injunction restraining purported agents and or servants of the defendants howsoever from entering into the said camp namely Camp KM63, Nanga Gaat, Kapit, Sarawak until trial of this action;

(2) An order that the purported agents and or servants of the defendants be restrained howsoever from interfering, tampering, damaging, defacing, removing the various equipments and machineries in the possession, custody, care and or use of the plaintiffs until the trial of this action;

(3) Should the honourable court grant the above prayers (1) and (2), an *inter partes* hearing be fixed and heard within the period of 14 days thereof;

(4) Costs.

On 2 May 2000, I granted order in terms of the *ex parte* order. And a return date was given on 15 May 2000 for a hearing on an *inter partes* basis.

On 15 May 2000, on the day fixed for the hearing of the *inter partes* argument, the learned counsel for the plaintiff informed the court that he was served with various affidavits on 15 May 2000. The documents are very thick and voluminous and he required time to file affidavits in reply. As such, he asked for an adjournment and submitted that the court has inherent iurisdiction to extend time for the hearing of the *inter partes* argument. He requested the court to grant a holding over injunction until the disposal of the *inter partes* hearing.

The learned counsel for the 1st defendant raised a preliminary objection that the affidavit served on her client does not comply with O. 41 of the Rules of the High Court 1980 that the jurat is defective in that the name of the deponent is given as the language. The language that it was translated was not stated. She also submitted that application before the court is the application upon which the *ex parte* injunction was obtained. Once an order is given upon an application then that application is extinguished. If the plaintiff wishes to have an *inter partes* application then a fresh application must be made. There has been no *inter partes* application made.

The learned counsel for the 2nd defendant informed the court they have filed an affidavit affirmed by Yee Sew and served a copy on the learned counsel for the plaintiff. He submitted that the application which was served on his client was in fact an *ex parte* application which has been heard and disposed with the court granting the injunction in the terms as stated in the sealed copy of the court order dated 2 May 2000. Nothing in the court order directed and ordered that this application dated 2 May 2000 be heard *inter partes*.

Under O. 29 r. 1(2B) of the RHC, the life span of an *ex parte* injunction is two weeks. So a new application has to be filed.

I shall now deal with the matter before me.

I have perused the court copy of the affidavit of Sabu bin Choching affirmed on 2 May 2000. The jurat reads "read over and explained to Sabu bin Choching in Bahasa Melayu by Justine Balang Pako ... Sgd: Commissioner for Oaths." So the jurat is not defective and has complied with Order 41 of the RHC. Further by the 1st defendant and 2nd defendant filing affidavits in opposition and/or reply to the said affidavit of Sabu bin Choching without stating their objections in their affidavits have waived the right to raise the objection. As such, I dismiss the preliminary objection.

In *Lim Nyook Yin v. Ultratech Sdn Bhd & Anor* [1995] 1 MLJ 498; [1995] 1 CLJ 215 His Lordship Abdul Malik Ishak J at p. 503 said:

> The proposition that Mr. A Selvanathan has no right to apply for a return date whilst making an application for an *ex parte* interim iniunction under O. 29 r. 1(2B) of the RHC and, consequently, that the court has no power to fix a return date, is entirely without merit. The words, as suggested by Mr. A Selvanathan appearing in O. 29 r. 1(2B) of the RHC especially the expression 'unless sooner revoked or set aside' would, by itself, give the power to the court to set a return date for an *inter partes* hearing. This is the best way for the defendants to revoke or set aside the *ex parte* interim injunction before the expiry of two weeks. ... Now, with the insertion of r. 1(2B) to O. 29 of the RHC, the rules committee must have intended that all *ex parte* interim injunctions be valid for two weeks and return dates be given forthwith, preferably before the expiry of the two weeks to enable the matter to be argued fully. It must also be pointed out that in the *inter partes* hearing, the *ex parte* interim injunction may be further extended *inter partes* until the disposal of the main suit. That the court has such an inherent power to make such an order is beyond dispute (see O. 92 r. 4 of the RHC).

I am in full agreement with his Lordship Abdul Malik Ishak J as aforesaid.

The learned counsel for the plaintiff submitted that they had by letter dated 5 May 2000 put the parties on clear notice of the *inter partes* hearing on 15 May 2000. And both defendants have filed affidavits to oppose. The 2nd defendant has filed an application to set aside the injunction.

This court has fixed 15 May 2000 for *inter partes* hearing of the *ex parte* application dated 2 May 2000. And the defendants have been informed by the plaintiff that the *inter partes* hearing is fixed on 15 May 2000. The plaintiff has also served the *ex parte* application and the supporting documents on the defendants. So there is no necessity for the plaintiff to file a fresh application to extend the *ex parte* injunction granted on 2 May 2000.

The hearing fixed on 15 May 2000 is an *inter partes* hearing. As the plaintiff was only served the affidavits of the defendants on the date of the hearing, it is a reasonable request by the plaintiff for the hearing *inter partes* to be adjourned to another date to enable the plaintiff to file affidavits in reply.

In the exercise of my inherent jurisdiction under O. 92 r. 4 of the RHC, I order that the injunctive reliefs granted in the *ex parte* order dated 2 May 2000 be extended until the hearing of *inter partes* arguments on 3 July 2000. I order that costs should be in the cause.